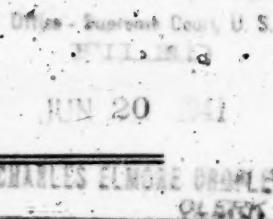


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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 115 96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

✓ HENRI BROWN,
Attorney for Respondents.

JAIME SIFRE, JR.,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 1073

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

The opinion of the Supreme Court of Puerto Rico (R. 120-127) is not yet reported. The opinion of the Circuit Court of Appeals (R. 170-182) is reported in 118 Fed. (2nd) 752.

Jurisdiction

The Judgment of the Circuit Court of Appeals was entered March 31, 1941 (R. 183).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

The order of the Supreme Court of Puerto Rico appointing a receiver was based upon the adjudication of certain primary rights and relief, to effectuate which the appointment of a receiver was made. This adjudication involved the construction of Puerto Rican statutes and the application of general principles of law.

The Circuit Court of Appeals, in reversing the decision and vacating the order appointing a receiver held that the Supreme Court of Puerto Rico erred in its construction of provisions of the Corporation Law and of the Code of Civil Procedure of Puerto Rico; that it likewise erred in failing to consider and apply settled principles of general law affecting the necessity and propriety of the appointment of a receiver and as to the legal effect of notice of *lis pendens*.

Review of the judgment of the Circuit Court of Appeals is sought here upon the ground that it violates the settled rule that the Supreme Court of Puerto Rico must not be overruled in its construction of local statutes in the absence of "clear or manifest error".

Specifically and separately stated these questions are:

(1) Was the construction of Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico by the Supreme Court of Puerto Rico clearly and inescapably wrong?

(2) Was the construction of Section 182, Par. 4, of the Code of Civil Procedure of Puerto Rico by the Supreme Court of Puerto Rico clearly and manifestly wrong?

The first of the "questions presented" set out in the Petition is:

"Did the Supreme Court of Puerto Rico possess the power or jurisdiction to appoint the Receiver?"

It is further stated that the Circuit Court of Appeals did not pass directly on this question although its opinion

apparently implies jurisdiction in the insular court, but that in any event the decision of the Supreme Court of Puerto Rico that it possessed such power and jurisdiction was not "inescapably wrong".

The power or jurisdiction of the Supreme Court of Puerto Rico to appoint a receiver to take possession of property not involved in the litigation is not a matter of local law and the lack of power or jurisdiction in such case is firmly settled by authority.

Statement

This Quo Warranto proceeding was instituted in the Supreme Court of Puerto Rico on January 28, 1936. Shortly thereafter petitioner caused a notice of *lis pendens* to be entered in the Registry of Property in which the defendant corporation's properties were inscribed.

The jurisdiction of the Supreme Court of Puerto Rico was based on two Acts passed at a Special Session of the Puerto Rican legislature, namely Act No. 33, approved July 22, 1935, and Act No. 47, approved August 7, 1935. These Acts amended "An Act Establishing Quo Warranto Proceedings", approved March 1, 1902, and for the first time conferred jurisdiction of quo warranto proceedings on the Supreme Court of Puerto Rico in certain cases.

Section 6 of Act No. 47 amends Section 2 of the original Act and prescribes the judgment that the Court must render in event that the Court finds that the acts charged in the information are "satisfactorily established".

The judgment so prescribed in case the defendant is a domestic corporation must "decree the dissolution thereof . . . the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for the property."

The amended information charged that the defendant corporation was authorized to engage in agriculture and that it owned and controlled more than 500 acres of land which constituted a violation (1) of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900; (2) of its articles of incorporation and (3) of the public policy of the People of Puerto Rico, and the prayer was that the Court adjudge the corporate franchise to have been forfeited, decree immediate dissolution of the corporation, impose a fine, and for other relief.

The defendant corporation challenged the jurisdiction of the Court upon the ground that the two Acts purporting to confer jurisdiction were invalid as without the grant of legislative power in the Organic Law of Puerto Rico and as invading a legislative field reserved to the Congress.

The validity of Act No. 47 was also attacked upon the ground that the penalty provisions in Section 2 above set out constituted *ex post facto* legislation, deprived defendant corporations of due process and impaired the obligations of contracts valid and lawful at the time they were entered into. The Supreme Court of Puerto Rico held that the above mentioned Acts were within the powers granted the legislature, but upon the insistence of petitioner that the penalties prescribed in Act No. 47 were not sought to be imposed, declined to pass upon the validity of such provisions.

On July 30, 1938 the Supreme Court of Puerto Rico gave judgment finding the defendant corporation guilty of violation of the Joint Resolution of Congress and of its articles of incorporation in respect of its ownership and control of land in excess of five hundred acres.

The judgment decreed:

"The forfeiture and cancellation of the licenses of the defendant corporation and of its articles of incorporation and the immediate dissolution and winding up of the affairs of the corporation."

It also imposed a fine of \$3,000, costs and attorneys fees.

On the same day that the judgment was entered petitioner filed a motion for the appointment of a receiver upon the only ground that "such dissolution and disposition of the property of the defendant shall (should) be entrusted to a receiver".

The defendant corporation promptly appealed to the Circuit Court of Appeals for the First Circuit from the judgment and the motion for appointment of a receiver was not set for hearing.

The Circuit Court of Appeals reversed the judgment of the Supreme Court of Puerto Rico on the ground that Acts Nos. 33 and 47 were not within the grant of legislative powers (106 Fed. (2nd) 754) and was in turn reversed by this Court on certiorari (309 U. S. 543).

Both before the Circuit Court of Appeals and before this Court defendant raised the question of the invalidity of the penalty provisions of Act No. 47 and in both courts counsel for the People of Puerto Rico insisted that the penalties were in nowise involved in the case.

In both courts this contention of counsel for the People of Puerto Rico prevailed and neither court passed upon this question.

On the oral argument before this Court counsel for respondent made mention of the motion for the appointment of a receiver and obviously counsel for the People of Puerto Rico did not consider that this motion was a proper vehicle to invoke the imposition of the penalties.

Replying to a question by the Chief Justice as to how the People of Puerto Rico could exercise the option to confiscate real property of the defendant corporation, counsel for Puerto Rico, Colonel Rigby, replied:

"If it did, it would have, as I have said before, as we understand it, to file a supplemental bill or some new action in court; or begin a new action and proceed and give the respondents their day in court; because there is nothing in this case to authorize a summary proceeding upon the face of this judgment. There is nothing of that kind in this judgment at all."

Mr. Justice STONE asked:

"How is their choice evidenced, by a suit?"

Col. Rigby answered:

"I presume it would have to be a suit, by a suit, by some formal action of some kind. Nothing of that kind is here so far as the facts in this case are concerned. The prayer is only, as I read, in the usual form, under quo warranto procedure for forfeiture of charter, license to do business, dissolution of the corporation, fine and costs—and that is all that has been ordered. So, normally what would follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and, if necessary, the appointment of a receiver and the winding up of the business of the corporation, as the business of the corporation is wound up upon death of the corporation, for any purpose at all or for any reason."

Shortly after the judgment of this Court affirming the judgment of the Supreme Court of Puerto Rico, on March 27th, 1940, a motion duly verified and subscribed by all of the stockholders of the defendant corporation and accompanied by a certified copy of the judgment of the Supreme Court of Puerto Rico was filed in the Office of the Executive Secretary of Puerto Rico with the request that the dissolution of the corporation in conformity with the judgment be noted (R. 119). On March 28, 1940 a deposit to pay the fine of \$3,000 and costs was made with the Clerk of the Supreme Court of Puerto Rico (R. 17, 18) and such moneys were ordered to be paid to petitioner (R. 20).

Directors of the defendant corporation acting as statutory liquidators satisfied and extinguished all obligations of the corporation and with the unanimous consent of all stockholders transferred all of its properties to a civil partnership formed with all of the stockholders of the corporation as members. Thereafter on March 29, 1940 such transfer was notified to the Attorney General and

members of the purchaser partnership stated their willingness to sell all such properties to the People of Puerto Rico (R. 109, 110).

The prompt disposition of the properties of the respondent corporation, the liquidation and winding up of its affairs was not only required by the judgment of the Supreme Court of Puerto Rico which ordered the *immediate* dissolution and winding up of its affairs, but in order to prevent serious loss and liability to fines and imprisonment by its directors under the provisions of Section 6 of the Quo Warranto Law as amended by Act No. 47.

The preservation of values by the continued cultivation of plantations of sugar cane, the operation of its railroad to comply with contracts with colonos, the harvesting of sugar cane and the operation of the sugar factory to grind cane owned by the corporation and contracted for with its colonos, constituted business which the defendant corporation was created and empowered to carry on by its articles of incorporation. The continuance of such business after a final judgment of forfeiture and dissolution would constitute disobedience to the mandate of the judgment and subject the directors to fine and imprisonment.

The result of the transfer was that the properties reverted to substantially the same situation as existed prior to the organization of the corporation, at which time the properties were owned and operated by the civil partnership Rubert Hermanos and there was no law limiting the ownership of land by partnerships or individuals in Puerto Rico.

On May 13, 1940, four days before the end of the Second Term of the Supreme Court of Puerto Rico, the mandate of this Court was received by the Clerk of that Court and on the same day petitioner requested the Court to set the motion for appointment of a receiver for hearing. Respondents filed an answer to the motion stating that the judgment of the Court had been complied with, the corporation dissolved, its obligations extinguished and its properties disposed of by unanimous agreement of its

stockholders and liquidators. The answer further set out that even if the corporation had not been liquidated, the Court was without jurisdiction to appoint a receiver because the quo warranto proceeding was no longer pending, because petitioner was not authorized by law to request the appointment of a receiver, because the motion did not state facts authorizing such appointment, and that the appointment of a receiver would violate the due process clause of the Organic Act (R. 21, 22).

The motion was set for hearing on June 24, 1940 and on that date the parties stipulated that the motion be submitted for decision on briefs.

On July 5, 1940 petitioner filed its first brief in support of the motion and in this brief for the first time stated that the principal ground or objective of the motion was to preserve the status quo until the People of Puerto Rico could exercise its option to confiscate the real property of respondent or to have it sold at public auction, for which purpose Act No. 47 of 1935, Section 2, granted a term of six months running from the date of final judgment in the quo warranto proceeding (R. 23, 25, 26). Respondents answered that Act No. 47 properly construed required that the option be exercised before final judgment, that the term of six months was the term within which the properties must be confiscated or sold after final judgment (R. 87, 88, 89, 90, 91); that the directors of the respondent corporation were its statutory liquidators entitled to the possession of its properties and authorized to dispose of the same and wind up its affairs by Sections 27 and 28 of the "Act to establish a law of Private Corporations" (R. 16, 47).

Respondents also contended that Petitioner was estopped to request the confiscation or sale of the properties (R. 97-103).

The Supreme Court of Puerto Rico decided all questions raised adversely to respondents and entered an order appointing a receiver not upon the grounds set out in Petitioner's motion but upon the grounds first suggested in Petitioner's brief (R. 120-130). This order is correctly

summarized by the Circuit Court of Appeals (118 Fed. (2nd) 756, 757), as follows:

"Though the insular government asked for a receivership to liquidate the dissolved corporation, the order does not direct the receiver to proceed with the liquidation but on the contrary contemplates the full operation of the business for an indefinite period. The receiver is directed to take possession not only of the land illegally held but also of all the other property of the corporation, movable and immovable, of every kind and description. He is to continue managing said properties and cultivating the lands, until further order of court, doing all that may be necessary to maintain and preserve the business established by the defendant corporation. Specifically, he is authorized to employ, compensate and dismiss workmen, servants, agents and attorneys; to purchase and pay for materials, and accessories needed; to settle with creditors all claims in the ordinary course of business; to pay taxes; to initiate and defend all actions in behalf of or against the corporation; to institute all legal proceedings necessary for the purpose of obtaining possession and control of any property of the corporation; to give all security which might be necessary to secure loans of funds in interest of the trust confided to said receiver by these presents." All moneys coming into the hands of said receiver as such are to be deposited in his name in one or more banks with the approval of the court, against which deposits the receiver shall have the right to draw by his personal order or by order of his agents. It is further provided that should the People of Puerto Rico request, in accordance with Act No. 47, the sale at public auction of the said properties, the receiver is authorized to proceed 'in accordance with the plan which shall be submitted to the previous approval of this court or of the judge acting in the name of this court during its vacation, to sell said properties at public auction.' In addition, it is ordered that the defendant, its directors, officers and agents, and all those persons, partnerships or corporations claiming any right by reason of the assignment or transfer made by the defendant

corporation subsequent to the date on which the judgment of dissolution was entered, shall 'refrain from disposing of, conveying or selling in any manner movable or immovable property of which they might be in possession or which they may have under their control, and from interfering with or obstructing the receiver or impeding him in any form from taking possession of the said properties of said corporation.'"

This order was entered on July 26, 1940. Respondents appealed to the Circuit Court of Appeals for the First Circuit. Nearly a month after the appeal was allowed, the Attorney General of Puerto Rico filed in the Supreme Court of Puerto Rico a motion stating that "The People of Puerto Rico elects to have all lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force."

The Decision Below

In the opinion and decision of the Circuit Court of Appeals, there is no express declaration regarding the jurisdiction of the Supreme Court of Puerto Rico to make the order appointing a receiver. The contention of respondents, appellants below, that the Supreme Court of Puerto Rico was without jurisdiction to enter a new and different judgment after the final judgment of July 30, 1938 deciding the issues raised by the amended information and answer had been affirmed by this Court, was decided adversely by the Circuit Court of Appeals. The Court held that there could be more than one final judgment.

It is implicit in the decision, however, that the Circuit Court of Appeals deemed that the order appealed from was made without jurisdiction or in excess of jurisdiction in that the receiver was authorized and directed to take possession not only of land unlawfully owned by defendant,

but of all other property of every character belonging to the defendant corporation. As to this part of the order the Court said (118 Fed. (2nd) 759):

"This option relates only to the disposition of the excess acreage of land and has nothing to do with the other assets of the corporation of every kind and description, all of which the receiver is ordered to take into his possession by the order appealed from."

The Court also said:

"Nor have the People of Puerto Rico a sufficient interest in the premises to justify the Court in continuing the operation of the business through a receiver for an indefinite period, when the owners of the corporation after its franchise has been forfeited want to wind up the corporate affairs and promptly proceed to do so."

This language would seem to imply that in the opinion of the appellate court the order of the Supreme Court for an operating receivership for an indefinite period was without jurisdiction or in excess of jurisdiction.

The Circuit Court of Appeals sustained the adjudication of the Supreme Court of Puerto Rico that the provisions of Act No. 47 gave the People of Puerto Rico an option to confiscate or have sold at public auction lands of the defendant corporation unlawfully possessed and the right to exercise such option at any time within six months after final judgment in the quo warranto proceeding. It held that the appointment of a receiver was not a remedy necessary to effectuate the right so adjudicated because that right was adequately protected by a notice of *lis pendens* entered in the Registry of Property.

The decision of the Supreme Court of Puerto Rico upon which the order appointing a receiver was based adjudicated for the first time two other questions: first, that Sections 27, 28 and 29 of the Private Corporations Law are not applicable to dissolutions resulting from a decree of forfeiture of the corporate franchise and that in such case the directors of the corporation so dissolved are not statutory

trustees in liquidation; second, that paragraph 4 of Section 182 of the Civil Code of Puerto Rico made the appointment of a receiver mandatory in cases where a corporation had forfeited its corporate rights. The Circuit Court of Appeals reversed the Supreme Court of Puerto Rico as to these two questions and its decision in this respect petitioner seeks to have reviewed by this Court.

Statutes Involved

The pertinent portions of the applicable statutes are set out in Appendix, *infra*, pages 19-22.

Argument

I

Petitioner contends that Act No. 47 gives an option to confiscate or have sold at public auction all of the real property of the defendant corporation and that the order authorizing and directing the receiver to take possession of all of the property of every nature of the corporation was necessary and proper.

Petitioner is in error.

The option is conferred by Section 2 of the Act establishing Quo Warranto proceedings, as amended by Section 1 of Act No. 47 of 1935, in the following language:

“When any corporation by itself or through any subsidiary or affiliated entity is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.”

The Court was without jurisdiction to appoint a receiver of property not involved in the litigation, in which

the People of Puerto Rico had no interest. *In re Richardson's Estate*, 294 Fed. 349, 357; *Smith v. McCullough*, 104 U. S. 25; *Staples v. May*, 87 Cal. 178.

II

Petitioner maintains that the decision of the Supreme Court holding that Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico are not applicable to and do not include dissolutions of corporations by judgments in quo warranto proceedings forfeiting corporate charters, is clearly right and in any event not so inescapably wrong as to warrant reversal by the Circuit Court of Appeals. For this reason Petitioner thinks that the decision of the Circuit Court of Appeals violates the rule established by this Court in *Sancho Bonet, Treasurer, v. Texas Co.*, 308 U. S. 463, 471.

It is submitted that the Supreme Court of Puerto Rico was clearly and unmistakably wrong in this, its first and only construction of the above mentioned sections of the Private Corporations Law.

The Private Corporations Law of Puerto Rico is generally assumed to have been adopted from the "General Corporations Act" of New Jersey of April 21, 1896. Its provisions are similar to those statutes of this nature in the several states. It had no prototype or antecedent in the laws in force in Puerto Rico prior to its enactment.

The purpose and effect of provisions of like or similar type in state laws have long been settled by uniform decisions of the highest courts of the States before Puerto Rico adopted the law.

As to provisions similar to or identical with Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico, it has uniformly been held that the effect of such provisions is to abrogate the principles of the common law as to reversion of the real estate, escheat of personal property and extinguishment of debts of dissolved corporations.

Provisions of this tenor constitute a part of the charter of every corporation created by or under the statutes in which they are included. *Ferguson vs. Miners' & M. Bank*, 3 Sneed (Tenn.) 609. *Evans v. Illinois Surety Co.*, 298 Ill. 101, 131 N. E. 262. They are embodiments of equitable doctrines and afford legal remedy where before there was none. *Mason v. Pewabic Min. Co.*, 66 Fed. 395. The unqualified term "dissolution" in such statutes has been held in all but one jurisdiction (Texas) to include dissolutions resulting from forfeiture of the corporate franchise.

The term "dissolution" qualified as in the instant statute has been held, without exception, by the Courts to include dissolution by decree of forfeiture.

Havemeyer v. Superior Court, 84 Cal. 327;
Watts vs. Vanderbilt, 45 Fed. (2nd) 968-70.

The Supreme Court of Puerto Rico has repeatedly held that where Puerto Rico has adopted statutes of a state it would follow the construction of such statute by the courts of the State of origin.

Rios v. Richards, 24 P. R. R. 514;
People vs. Benitez, 19 P. R. R. 235;
Bithorn vs. Ball, 17 P. R. R. 549, 554;
Chavier v. Giraldez, 15 P. R. R. 145.

There is no pretense that the language of Sections 27, 28 and 29 is ambiguous.

The construction given to these sections of the statute by the Supreme Court of Puerto Rico violates the plain letter of the law, runs counter to the well-settled construction by the highest courts of the state or states from which the statute derives. It ignores the universally recognized purpose for which statutes of this type have been enacted in the different states.

And this clearly erroneous construction presents a situation where reversal by the Circuit Court of Appeals is proper and warranted. *Philippine Sugar E. D. Co. v. Philippines*, 247 U. S. 385, 389, 390.

III

Petitioner asserts that the officers and directors of the defendant corporation whether considered as directors and officers or as liquidating trustees, have abdicated a trust imposed on them by law to retain the properties and assets of the corporation until the People of Puerto Rico had decided whether to exercise the option to confiscate or have the properties sold at public auction and until the motion for appointment of a receiver had been decided and that the transfer of such properties and more particularly a transfer to a partnership composed of all of the stockholders constituted "an abdication of the trust".

It is argued that abdication of the trust is a ground for the displacement of such directors or liquidating trustees and the appointment of a receiver agreeable to the usages of a court of equity. Petitioner says that this power rests on subdivision 5 of Section 182 of the Code of Civil Procedure.

This theory and argument is advanced for the first time in this Court. It was not suggested to the Circuit Court of Appeals. In the Supreme Court of Puerto Rico, subdivision 4 of Section 182 of the Code of Civil Procedure of Puerto Rico was the subdivision of the Section relied upon by petitioner (R. 27, 63) and this is the paragraph and the only paragraph or subdivision upon which the Supreme Court of Puerto Rico, in the decision appealed from, rests its jurisdiction (R. 122). See *Rubert Hermanos, Inc. vs. People of Puerto Rico*, 118 Fed. (2nd) at page 759.

It is clear, therefore, that in this particular and as to this question the Circuit Court of Appeals did not disturb or overrule a decision of the Supreme Court of Puerto Rico on a matter of local law because no such decision was ever made.

Assuming, however, that this theory and argument is open to petitioner here, it is untenable because the power of the Supreme Court of Puerto Rico was not properly called into exercise under paragraph 5 of Section 182 and because there was no abdication of trust.

Neither subdivision 4 nor 5 of Section 182 of the Puerto Rican Code of Civil Procedure, which are identical with

paragraphs 5 and 6 of Section 564 of the Code of Civil Procedure of California, authorize the appointment of a receiver after judgment. 22 *California Jurisprudence*, page 451, Sec. 33: Subdivision 5, authorizing the appointment of a receiver in all other cases where receivers have heretofore been appointed by the usages of courts of equity, simply means that in addition to particular instances mentioned in preceding subdivisions appointment of receiver should be made by courts of competent jurisdiction, as courts of equity, in other suits in which power would have been employed; it confers no new power, creates no ground for appointment of receivers other and distinct from those theretofore existing.

Bateman v. Superior Court, 54 Cal. 285, 288; *French Bank case*, 53 Cal. 495, 553, 554.

As pointed out by the Circuit Court of Appeals, paragraph 4 of Section 182 of the Code of Civil Procedure only preserves to the courts jurisdiction to supplant statutory trustees upon proper showing of an interested party, agreeably to the usages of courts of equity (118 Fed. 2nd 759).

There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation. It belonged to the stockholders of the corporation and after the payment of debts of the corporation such property or its proceeds was distributable among the stockholders. Section 31, Private Corporations Law. Sections 28 and 29 of the same Act expressly empower the directors of a dissolved corporation, as statutory trustees, to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders after paying its debts; to prescribe the terms and conditions of the sale of the corporate property and to sue for and recover debts and property.

The duties of the statutory trustees are measured by their powers and by the principles of law and equity applicable to the conditions. *Rossi v. Caire*, 174 Cal. 74, 81.

It was not a necessary part of the statutory duty of the directors-trustees to sell the property otherwise than to settle the corporate affairs. If they had money to pay all debts and expenses and all other corporate affairs were disposed of, it would be no abuse of their discretion if they merely transferred the property to the stockholders as tenants in common according to their interests, leaving it to them to do with it what they pleased. *Rossi v. Cairz, supra*, 82.

The final judgment of the Supreme Court of Puerto Rico was affirmed by this Court on March 25, 1940, in the middle of the grinding season, when the factory of defendant corporation was in full operation. It was incumbent upon the directors of the corporation to take immediate action by which the operation of the factory could be continued to avoid the total loss of the ripe sugar cane belonging to its colonos that it was under contract to grind, and its own cane. It was likewise necessary to protect growing crops, to comply with provisions of contracts for advances and other assistance to colonos and for these and other reasons to continue operating the railroad. Furthermore, a paralyzation of factory operations during the grinding season would occasion a loss of many thousand dollars daily by reason of continuing salaries, wages and overheads. The corporation after final judgment forfeiting its franchise and ordering its immediate dissolution, could no longer continue any of these operations.

The action of the directors-trustees in paying the debts and distributing the property of the defendant corporation was in obedience to the express mandate in the final judgment ordering that the affairs of the defendant corporation be immediately wound up.

Usages of courts of equity and principles of equity are not matters of local law.

The Circuit Court of Appeals said:

"The People of Puerto Rico do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale.

The land will still be there. Meanwhile, the interest of the People of Puerto Rico is protected by a *lis pendens* notice which was entered in the Registry of Property shortly after the institution of the quo warranto proceedings, which notice the corporation unsuccessfully sought to have cancelled." 118 Fed. (2nd) 759, 760.

The correctness of this statement is not challenged, in any event not directly or expressly challenged by petitioner.

The appointment of a receiver, on account of the serious consequences arising from an improvident exercise of this power, is hedged with all the rules formulated by courts of equity as guides in the exercise of powers inherent in a court of equity. There must be a showing of a danger that the property may become lost, materially injured or destroyed. A receiver will not be appointed where an injunction, restraining order, *lis pendens* or other legal remedy would be adequate.

Jones v. Smith, 40 Fed. 314;

U. S. v. Masich, 44 Fed. 10;

A. G. Col v. Superior Court, 196 Cal. 604, 613, 614.

Conclusion

The decision of the Circuit Court of Appeals in the particulars complained of by petitioner is correct. It constitutes no violation of the rule established by this Court in, *Sancho Bonet, Treasurer, v. Texas Co.*, *supra*, and presents no question of importance calling for a review by this Court.

As to other questions decided by the Circuit Court of Appeals which Petitioner deems correctly decided, Respondents propose to file a Cross-Petition for a writ of certiorari.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRI BROWN,
Attorney for Respondents.

JAIME SIFRE, JR.,
Of Counsel.

APPENDIX

Pertinent statutory provisions of Puerto Rican Statutes

Sections 27, 28, 29, 30 and 31 of an Act entitled "An Act to Establish a Law of Private Corporations", approved March 9, 1911:

"Section 27.—*Corporate Existence Pending Dissolution.* All corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established."

"Section 28.—(As amended by Act of April 13, 1916, page 68.) *Directors as Trustees Pending Dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustee or trustees thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and

property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets."

"Section 29.—Powers and Liabilities of Trustees in Liquidation. The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names, or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 30.—Judicial Appointment of Liquidators. When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may, at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purpose aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

"Section 31.—Distribution of Assets by Trustees or Liquidators. The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation, who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders."

Sections 1 and 2 of Act No. 47, approved August 7, 1935, amending paragraphs 2 and 6 of the "Act Establishing Quo Warranto Proceedings", approved March 1, 1902:

Section 1, amending Section 2 of the Quo Warranto Law:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 2, amending Section 6 of the Quo Warranto Law:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."

Section 182 of the Code of Civil Procedure:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. After judgment, to carry the judgment into effect.
3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

Section 348 of the Code of Civil Procedure:

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied."